

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MATTHEW MERZ ,

Plaintiff,

v.

CITY OF KALAMA, et al.,

Defendant.

CASE NO. C24-5588 BHS

ORDER

THIS MATTER is before the Court on defendants'<sup>1</sup> motion for a protective order, Dkt. 36. Defendants ask the Court to stay written discovery until it resolves their forthcoming Federal Rule of Civil Procedure 12(c) motion for judgment on the pleadings. They argue that pro se plaintiff Matthew Merz's pending discovery is voluminous and unduly burdensome, and potentially unnecessary because their dispositive motion will test the plausibility of Merz's amended complaint's factual allegations and legal theories, not his evidence.

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<sup>1</sup> Defendants are the City of Kalama, its police department and library, Kalama's mayor, Mike Reuter, its employee Raphael Herrera, its Library Board Trustee Harlyn Jenkins, and its councilmember Jon Stanfill. Merz has apparently served discovery on all but Stanfill.

1 Merz argues that the defendants' request is unjustified and would prevent him  
2 from gathering evidence central to his claims. He asserts his discovery is timely and  
3 proportionate to the needs of his case, which involves a "complex" conspiracy claim and  
4 a fact intensive *Monell* claim. Dkt. 39 at 3. Merz also argues he seeks communications  
5 among the defendants and non-party conspirators about his performance, their official  
6 actions with respect to him, and related city business, and that these records are public  
7 records under the Public Records Act, RCW 42.56. *Id.*

8 Merz argues that he will be prejudiced by a stay because he has "credible  
9 concerns" over potential evidence destruction and a stay will give the defendants more  
10 time to deliberately suppress and destroy evidence. He asserts, but does not demonstrate,  
11 that in August 2021, someone deleted from his city email account an email containing a  
12 death threat, and that that is a concrete example of harm he may suffer if discovery is  
13 stayed.

14 Defendants correctly contend the Court has broad discretion over discovery. Dkt.  
15 36 at 3 (citing Rule 26(c)(1) and *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir.  
16 1988)). It has discretion to stay discovery pending an early motion that is potentially  
17 dispositive of the case or the subject of the discovery, and where that motion can be  
18 decided absent discovery. *Id.* (citing *DiMartini v. Ferrin*, 889 F.2d 922 (9th Cir. 1989),  
19 *amended at* 906 F.2d 465 (9th Cir. 1990); and *Ministerio Roca Solida v. U.S. Dep't of*  
20 *Fish & Wildlife*, 288 F.R.D. 500, 506 (D. Nev. 2013)).

21 Defendants sought a Rule 12 dismissal of Merz's initial complaint in January, Dkt.  
22 17, and he did not oppose that motion. Instead, he sought and was granted leave to

1 correct the deficiencies in his initial complaint by filing an amended complaint. Dkt. 24.

2 His amended complaint is shorter, but Merz's core claims are the same:

3 Defendants (a) conducted an unauthorized "character background  
4 investigation" on Plaintiff in violation of City library policy, falsely  
5 branding him as racist, sexist, homophobic, transphobic, and even a child  
6 predator, and disseminated these defamatory labels to City officials, City  
7 staff, and the public; (b) weaponized sensitive police information by  
8 releasing to City officials digitally manipulated, sexually degrading images  
9 from a confidential investigation file pertaining to Plaintiff in order to  
10 humiliate and discredit him; (c) suppressed and ignored credible threats  
11 against Plaintiff's life from a third party, going so far as to delete a death-  
12 threat email from Plaintiff's City account and mute Plaintiff's microphone  
13 during a council meeting to prevent him from speaking about the danger he  
14 faced; and (d) abused legal processes by accessing Plaintiff's Protected  
15 Health Information ("PHI") without lawful authority in order to pursue a  
16 baseless Extreme Risk Protection Order ("ERPO") against Plaintiff  
17 following the onset of this very lawsuit currently before the Court with the  
18 punitive intent to further harass, intimidate, and defame him, an action that  
19 was swiftly leaked to local media to publicly smear Plaintiff. Each of these  
20 acts was carried out under official authority, without due process and  
21 reckless disregard for Plaintiff's substantive due process rights under the  
22 First and Fourteenth Amendment, and often in direct contravention of City  
policy and state law.

14 Dkt. 27 at 5.

15 Defendants accurately assert that their anticipated motion will be decided on the  
16 plausibility of Merz's allegations, not his evidence, and if his amended complaint has  
17 similarly failed to state a viable claim they will not have to respond to the more than 200  
18 discovery requests Merz has served. Dkt. 36 at 2, 4.

19 The Court agrees. Merz avoided defendants' prior, early challenge to the  
20 plausibility of his claims by amending his complaint. The subject discovery was served  
21 months after the defendants filed their initial motion, and just two weeks after Merz filed  
22 his amended complaint. Dkt. 37. Defendants' challenge to Merz's new complaint was

1 wholly foreseeable, and it is fair and reasonable to resolve the viability of Merz's claims  
2 before forcing defendants to respond to discovery that may be moot.

3 Defendants' motion for a protective order staying discovery in this case until the  
4 Court resolves defendants' promised motion is **GRANTED**. Defendants need not  
5 respond to the pending discovery until further Court order. They shall preserve, and not  
6 destroy, any potentially relevant evidence in the meantime.

7 **IT IS SO ORDERED.**

8 Dated this 24th day of April, 2025.

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12 BENJAMIN H. SETTLE  
13 United States District Judge  
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